IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

WP(C).No. 31965 of 2007(E)

PETITIONER:

IRUMBAYIL POULOSE,
IRUMBAYIL HOUSE, KARUMOM, PULPPALLY P.O.,
WAYANAD DISTRICT.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS:
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1. K.S.E.B., REPRESENTED BY THE SECRETARY,
VYDHYUTHI BHAVAN, THIRUVANANTHAPURAM.

2. ASSISTANT EXECUTIVE ENGINEER,
PULPALLY ELECTRICAL SUB DIVISION, KSEB PULPALLY,
WAYANAD.

3. ASSISTANT EXECUTIVE ENGINEER,
ELECTRICAL SECTION, KSEB PULPALLY, WAYANAD.

4. T.P. MOHANAN,
THEKKAPURATH HOUSE, PULPALLY P.O., WAYANAD.

5. ADDITIONAL DISTRICT MAGISTRATE,
KALPETTA, WAYANAD.

BY ADV. SRI.S.M.PRASANTH --- R4
GOVERNMENT PLEADER SRI. T.B. RAMANI
ADV. SRI. P.P.THAJUDEEN, SC FOR KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 31965/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE LAND TAX RECEIPT DT. 27/1/2007.

EXT.P2. COPY OF THE ORDER DT. 17/10/2007 IN OS. NO. 109/2007 BY THE MUNSIFF COURT, SULTHAN BATHERY.

EXT.P3. COPY OF THE JUDGMENT DT. 14/09/2007 IN WPC NO. 26958/07.

EXT.P4. COPY OF THE REPRESENTATION DT. 15/10/07 TO THE R5.

EXT.P5. COPY OF THE REPRESENTATION DT. 15/10/07 TO R2.

RESPONDENT'S EXHIBITS NIL.

True copy

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THOTTATHIL B. RADHAKRISHNAN, J.

WP(C) No. 31965 of 2007

Dated, this the 5th day of November, 2007

J U D G M E N T

The 4th respondent applied for a three phase electric connection. The writ petitioner filed a suit. The 4th respondent moved this Court and Ext.P3 judgment was issued, after hearing his counsel and the learned standing counsel for the Kerala State Electricity Board, directing that the Board authorities will move the Additional District Magistrate for removal of obstruction, by any person whose properties are likely to be crossed.

2. The civil court thereafter passed Ext.P2 order returning the plaint. I am not going into the legality of that decision.

3. But, acting on Ext.P2 order returning the plaint, the KSE Board officials drew the line. According the the learned standing counsel for the KSE Board, the line does not cross the writ petitioner's property, while the assertion of the petitioner is to the contrary. It is also his assertion that trees belonging to him have been felled for the drawal of the line and that his wife was arrested for obstructing the drawal of the line.

4. While I do not deem it proper to hold that the Board officials acted malafide, the situation could have been the result of Ext.P2 order of the civil court, which was after Ext.P3 judgment of this Court.

5. But, the police power of the State could not have been extended to aid the drawal of the line without proper orders being issued by the Additional District Magistrate under the relevant provisions of the Indian Telegraph Act and the Electricity Act. While it would not be proper for this Court to decide as to whether the line was drawn causing any injury to the property of the petitioner or by crossing any portion of the property of the petitioner or whether the drawal was exclusively through a public pathway, the fact remains that the Additional District Magistrate had not heard the parties, or issued orders, on the face of the objection of the petitioner.

6. As of now, the line has been drawn and energised.

7. In the aforesaid circumstances, this writ petition is

disposed of directing that the application filed by the Board authorities before the Additional District Magistrate shall be taken up by the Additional District Magistrate for consideration, and the parties shall be heard, and the matter decided in accordance with law, to determine whether the petitioner's objections to the drawal of the line was sustainable or whether that could have been removed in exercise of powers under the provisions of the Indian Telegraph Act and the Electricity Act. If the Additional District Magistrate concludes that the petitioner's objections are sustainable and the line has to be drawn through any alternate feasible alignment, technical feasibility of which is a matter for the expertise of the engineers of the KSE Board to state, the line as it is now laid shall be shifted without any expenditure being saddled on the petitioner. A final decision shall be rendered by the Additional District Magistrate, having regard to what is stated above, within an outer limit of two months from the date of receipt of a copy of this judgment, after affording an opportunity of being heard to the petitioner.

8. If any tree of the petitioner has been felled or any other damage has been caused to the property of the petitioner, the KSE Board officials shall take prompt action, in accordance with law, for providing compensation, if any due.

Sd/-

(THOTTATHIL B. RADHAKRISHNAN, JUDGE)

jg